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RAY LEE VAUGHN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAY LEE VAUGHN,)	NO. CIV 01-5241 OWW DLB HC
)	
Petitioner,)	
)	STIPULATION AND ORDER EXTENDING
v.)	TIME TO FILE PETITIONER'S
)	SUPPLEMENTAL BRIEF RE: PROCEDURAL
D. ADAMS,)	DEFAULT
)	
Respondent.)	
)	
)	

Petitioner, RAY LEE VAUGHN, and respondent, D. ADAMS, by and through their respective counsel, hereby agree and stipulate as follows:

1. Respondent's supplemental brief regarding procedural default was filed on February 24, 2005. The deadline for petitioner's supplemental brief was thereafter extended, by stipulation and order, to May 12, 2005. For the reasons set forth below, the parties agree that a second continuance is necessary and appropriate.

2. Pursuant to Bennett v. Mueller, 322 F.3d 573, 585-86 (9th Cir. 2003), petitioner must place the affirmative defense of procedural

1 default at issue by asserting specific factual allegations to
2 demonstrate the inadequacy of the state's procedural rule. To meet
3 this initial burden of production, petitioner is gathering
4 documentation of non-capital habeas cases in which the rule of In re
5 Dixon, 41 Cal.2d 756 (1953), could have been, but was not, applied by
6 the California Supreme Court during the general time period of
7 petitioner's purported default. Under Bennett, once petitioner makes
8 this showing the burden will shift to the state to prove that the
9 procedural rule is regularly and consistently applied.

10 3. In order to make the required showing, petitioner must
11 undertake extensive review of California Supreme Court closed habeas
12 case files, and compare the petitions against the direct appeals in
13 each case. Very little of the necessary data, and few of the necessary
14 documents, are available on-line or in published opinions.

15 4. As set forth below, petitioner has been diligent in
16 attempting to gather the necessary data and documents:

17 a. Beginning in early March, counsel identified a pool of
18 approximately 600 California habeas cases that had been decided by the
19 California Supreme Court in 1997. We determined that approximately 450
20 of these were related to federal habeas cases filed in the Eastern
21 District. Online review of federal dockets and (where available)
22 Findings and Recommendations identified, by process of elimination,
23 approximately 20 cases which could involve petitioners similarly
24 situated to Mr. Vaughn.

25 b. Specified portions of the record, filed in the federal
26 cases, were then requested from district court archives in Sacramento
27 and Fresno, and copies ordered. Following another round of preliminary
28 review and elimination, original state court documents were ordered

1 from the Fifth District Court of Appeal and the California Supreme
2 Court during the last week of April. The case files are archived.
3 Those documents have not yet been recieved.

4 5. Petitioner requires additional time to review the
5 documents already received, receive the documents ordered but not yet
6 received, screen all cases for their applicability to the issues
7 presented in this case, and conduct follow-up research as necessary.

8 6. For these reasons, petitioner respectfully requests a 30-
9 day extension of time, up to and including June 12, 2005, in which to
10 prepare and file his supplemental brief. Respondent has no objection
11 to this request.

12 7. Counsel for respondent, Deputy Attorney General Justain
13 P. Riley, has authorized the undersigned to sign this stipulation
14 electronically on his behalf.

15 Dated: May 5, 2005

16 Respectfully submitted,

17 QUIN DENVIR
18 Federal Defender

19 /s/ Allison Claire
20 ALLISON CLAIRE
21 Assistant Federal Defender
22 Attorney for Petitioner
23 RAY LEE VAUGHN

24 /s/ Justain P. Riley
25 JUSTAIN P. RILEY
26 Deputy Attorney General
27 Attorney for Respondents
28 D. ADAMS

ORDER

Pursuant to the stipulation of the parties, and for good cause shown, petitioner's request for a second extension of time is hereby GRANTED. Petitioner's supplemental brief regarding procedural default shall be filed no later than June 12, 2005.

IT IS SO ORDERED.

Dated: May 5, 2005
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/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE